

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OLIVIA RUX, et al., : Case No.: 08 Civ. 6588 (AKH)

Petitioners, :

-against- :

ABN AMRO BANK, N.V., AMERICAN :
EXPRESS BANK LTD., BANK OF :
AMERICA, N.A., BANK OF NEW YORK, :
BANK OF CHINA, CITIBANK, N.A., :
DEUTSCHE BANK A.G., DEUTSCHE :
BANK TRUST COMPANY AMERICAS, :
HSBC BANK USA, N.A. and JPMORGAN :
CHASE BANK, N.A., :

Respondents. :
_____ x

THE BANK OF NEW YORK MELLON, :

Third-Party Petitioner, :

-against- : **DECLARATION OF NAJAH SALEM
IN SUPPORT OF OBJECTIONS BY
BYBLOS BANK EUROPE S.A.**

THE REPUBLIC OF SUDAN, THE BANK :
OF KHARTOUM, EL NILEIN BANK, :
SUDAN AIRWAYS, SAUDI INVESTMENT :
BANK, BARCLAYS BANK, PLC, :
TURKIYE GUARANTI BANKASIAS, :
AIR ANATOLIA, CLIVEDEN, :
PETROLEUM CO. LTD., EFG BANK :
(GIBRALTAR) LTD., BNP PARIBAS, S.A., :
BNP PARIBAS (SUISSE) S.A., SUDANESE :
PETROLEUM CORPORATION, BYBLOS :
BANK EUROPE S.A., KOREA :
EXCHANGE BANK, BANK OF SUDAN, :
AL SHAMAL ISLAMIC BANK and :
SUDANESE LIBYAN INVESTMENT :
AND DEVELOPMENT CO. LTD., :

Third-Party Respondents. :
_____ x



I, NAJAH SALEM, declare that the following is true and correct:

1. I am the Managing Director and Chief Executive Officer of Third-Party Respondent Byblos Bank Europe S.A. ("Byblos").
2. Byblos is a bank headquartered in Brussels, Belgium. Byblos has branches in Paris, France and London, United Kingdom, and is also part of the Byblos Bank Group.
3. I respectfully submit this declaration as Byblos's Objections in response to the Court's September 22, 2008 notice that "any person or entity claiming to be the owner or to have an interest in any of the funds deposited with the court [in *Rux, et al., v. ABN-AMRO Bank N.V. et. al.*, Case No. 08 Civ. 6588 (AKH) ("the Underlying Action")] must submit written objections within sixty days of the date of this notice."
4. I understand that the Court issued this notice because in the Underlying Action, Petitioners Olivia Rux *et alios* have made an application to satisfy a judgment entered against the Republic of Sudan by applying the funds that have been deposited with the Court by the Respondents. The funds deposited with the Court, I understand, concern monies the Respondents had restrained in compliance with the Sudanese Sanctions Regulations imposed by the Department of the Treasury of the United States and administered by the Office of Foreign Assets Control ("OFAC") pursuant to 31 C.F.R. Part 538 (the "OFAC Regulations"). Those restrained funds include \$96,624.00 belonging to Byblos and which were held in a separate, blocked account by Respondent and Third-Party Petitioner Bank of New York Mellon ("BONY") (the "Byblos Fund"). As I explain, only Byblos has an interest in the Byblos Fund.
5. I make this declaration to show that Byblos has title and interest in the Byblos Fund, that the Republic of Sudan has no interest in the Byblos Fund, and that Byblos is not in any way

affiliated with the Republic of Sudan. While the Byblos Fund is currently frozen by BONY as a result of restraints issued by OFAC, those funds should not be used to satisfy the judgment entered in favor of Petitioners against the Republic of Sudan. As I explain, the sole party entitled to the Byblos Fund, if and when it is released from OFAC restraints, is Byblos.

The Byblos Fund.

6. The Byblos Fund originates as a result of an electronic wire transfer in the sum of \$96,624.00 that Byblos, on August 4, 2004, sent to a South Korean bank, Korea Exchange Bank ("Korea Bank") on behalf of and at the instruction of a Sudanese bank, El Nilelin Industrial Development Bank Group ("El Nilelin"). Attached as Exhibit 1 is a true and correct copy of the August 4, 2004 wire transfer instructions issued by Byblos.

7. This wire transfer was made in connection with a purchase-and-sale transaction whereby Al Osmany Plastic Granules Factory ("Al Osmany"), a Sudanese customer of El Nilelin, agreed to buy certain chemicals from a South Korean company, Dansuk Industrial Co. Ltd. ("Dansuk"), a customer of Korea Bank. Attached as Exhibit 2 is a true and correct copy of the commercial invoice reflecting Dansuk's sale of the chemicals in question to Al Osmany. Attached as Exhibit 3 is a true and correct copy of the relevant bill of lading covering the ocean shipment.

8. On August 4, 2004, El Nilelin asked Byblos to wire the \$96,624.00 in question to Korea Bank, Dansuk's bank, as payment for the goods that Al Osmany had purchased from Dansuk. (See Exhibit 1.) Byblos hence wired the amount of \$96,624.00 to Korea Bank through BONY, Byblos's correspondent bank in New York.

9. At the time that the wire transfer was effected, the OFAC Regulations required United States banks, including BONY, to block any monies going to or coming from the Republic of Sudan or any entity listed as a Specially Designated Nation under the OFAC Regulations.

10. As a result, because El Nilein is listed by OFAC as a Specially Designated National, when BONY received the wire payment instructions from Byblos it restrained the \$96,624.00 in question pursuant to the OFAC Regulations.

11. In light of BONY's restraint of the funds, El Nilein, to make payment for the goods, made a second and separate wire transfer on Al Osmany's behalf to Korea Bank, in the same amount (\$96,624.00), but using a different bank, *i.e.* a bank other than Byblos. Attached as Exhibit 4 is a true and correct copy of the communication sent by Byblos informing Korea Bank that El Nilein would make this second payment through a different bank.

Only Byblos Has an Interest In the Funds In Question.

12. After BONY restrained the funds, Byblos credited El Nilein's account with Byblos in an amount equal to the sum that BONY had restrained, *i.e.*, \$96,624.00. Attached as Exhibit 5 is a true and correct copy of the relevant wire instructions and as Exhibit 6 a true and correct copy of the credit advice showing that Byblos credited El Nilein's account in the sum of \$96,624.00 on August 30, 2004.

13. Because Byblos paid that \$96,624.00 to El Nilein, El Nilein was made whole and ceased to have any interest in the funds restrained and held by BONY.

14. On August 9, 2004, therefore, El Nilein—no longer having any interest in the restrained funds—assigned all its interest in those funds to Byblos. Attached as Exhibit 7 is a true and correct copy of El Nilein's assignment to Byblos of all its interest in the restrained funds.

15. Thus, today, only Byblos, and not any Sudanese government or entity, has right, title, and interest to the \$96,626.00 currently under restraint by BONY.

16. In particular, the Republic of Sudan does not have an interest in the Byblos Fund.

Byblos Has no Affiliation With the Republic of Sudan or El Nilein

17. As noted, Byblos is a bank headquartered in Brussels, Belgium and is part of the Byblos Bank Group. Byblos is not affiliated in any capacity with the Republic of Sudan or any of its agencies. The Republic of Sudan has no interest in Byblos. Naturally, Byblos is not an agency or instrumentality of the Republic of Sudan.

18. Byblos is also not affiliated in any capacity with El Nilein. El Nilein is only a customer of Byblos. El Nilein has no interest in Byblos, and Byblos is not an agency or instrumentality of El Nilein.

19. On behalf of Byblos, I therefore respectfully request that the Court recognize and enforce Byblos's property rights in the Byblos Fund and deny any request by the Petitioners to enforce the Judgment against the Byblos Fund.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on November 21, 2008.



NAJAH SALEM

EXHIBIT 1

04/08/04-17:27:21

Globtestprt-8805-000001

1

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----- Instance Type and Transmission -----
Notification (Transmission) of Original sent to SWIFT (ACK)
Network Delivery Status : Network Ack
Priority/Delivery : Normal
Message Input Reference : 1726 040804BYBBBEBBAXXX3262244533
----- Message Header -----
Swift Input : FIN 202 General Fin Inst Transfer
Sender : BYBBBEBBXXX
        BYBLOS BANK EUROPE S.A.
        BRUSSELS BE
Receiver : IRVTUS3NXXX
        BANK OF NEW YORK
        NEW YORK, NY US
MUR : 02965
----- Message Text -----
20: Transaction Reference Number
    FT0421700016
21: Related Reference
    FT0421700016
32A: Value Date, Currency Code, Amt
    Date : 04 August 2004
    Currency : USD (US DOLLAR)
    Amount : #96.624, #
52A: Ordering Institution - BIC
    ENIDSDKH
    EL NILEIN INDUSTRIAL DEVELOPMENT BANK GROUP
    KHARTOUM SD
56A: Intermediary - BIC
    CHASUS33
    JPMORGAN CHASE BANK
    NEW YORK, NY US
57A: Account With Institution - BIC
    KOEXGB2L
    KOREA EXCHANGE BANK
    LONDON GB
58A: Beneficiary Institution - BIC
    KOEXKRSE
    KOREA EXCHANGE BANK
    SEOUL KR
72: Sender to Receiver Information
    /BNF/FOR FURTHER CREDIT TO THEIR
    //IBSD BRANCH UNDER REF 019-RUC
    //410132
----- Message Trailer -----
{MAC:BE6AAD70}
{CHK:17A0F1EDC6CB}
----- Interventions -----
Category : Network Report
Creation Time : 04/08/04 17:26:14
Application : SWIFT Interface
Operator : SYSTEM
Text
{1:F21BYBBBEBBAXXX3262244533}{4:{177:0408041726}{451:0}{108:02965}}

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EXHIBIT 2

19/08/2004 10:07 002498378581111

FROM : NIDB>FORN>>>

FAX NO. : 002498378581111

Aug. 19 2004 10:32AM P2

70041

COMMERCIAL INVOICE

7004-104

1. Shipper/Exporter DANSUK INDUSTRIAL CO. LTD. 705, 1DA-SHIWHA INDUSTRIAL COMPLEX 1239-5, JEONGWANG-DONG, SHIHEUNG CITY, KYONGGI-DO, KOREA.		8. NO. & Date of Invoice EX-2080 JAN 16, 2003	
2. For Account & Risk of Messrs. AL OSMANY PLASTIC GRANULES FACTORY. OMDURMAN-SUDAN.		9. NO. & Date of L/C OM/DC/9004/04 JAN 11, 2004	
3. Notify Party AL OSMANY PLASTIC GRANULES FACTORY. OMDURMAN-SUDAN.		10. L/C Issuing Bank EL NILEIN INDUSTRIAL DEVELOPMENT BANK PO BOX 1722, 1722 UNITED NATIONS SQUARE KHARTOUM, SUDAN	
4. Port of Loading CORRESPONDENCE, KOREA		11. Remarks : AS PER PROF. INV.NO. DSS-40108 DTD.8/1/2004	
6. Carrier WEHR ALTONA W030	5. Final Destination PORT SUDAN, SUDAN	TRUE AND CORRECT SHOWING GROSS WEIGHT : 114.72MT NET WEIGHT : 105.6MT	
7. Sailing on/or About JAN 24, 2004	12. Marks and NO. of PKGS NO MARKS	13. Description 105.60MT DI OCTYL PHTHALATE(DOP) 480DRUMS OF EACH NET WT.220KGS IN EXPORT STANDARD PACKING ////////////////////////////////////	14. Q'ty 105.6MT @US\$915/MT
		15. Unit price CFR SUDAN	16. Amount USD96,624.00

Bank of China, Ltd. Group
Guangzhou Branch

70041

7004-104

Signed by
DANSUK INDUSTRIAL CO., LTD.

Telephone NO. : (031)433-0211
Fax NO. : (031)499-3909

Gu Jae Han
GU JAE, HAN / PRESIDENT

EXHIBIT 3

Aug. 19 2004 10:33AM P4

0054001331
JHC

As a result of the above, the Board of Directors of the American People's Party has decided to call for a national convention to be held in New York City on the 15th of September, 1968. The purpose of this convention is to discuss the party's platform and to elect delegates to the national convention. The Board of Directors has also decided to call for a national convention to be held in New York City on the 15th of September, 1968. The purpose of this convention is to discuss the party's platform and to elect delegates to the national convention. The Board of Directors has also decided to call for a national convention to be held in New York City on the 15th of September, 1968. The purpose of this convention is to discuss the party's platform and to elect delegates to the national convention.

SHIPPING AGENT REFERENCES (COMPLETE NAME AND ADDRESS)

HMB SHIPPING & TRADING LTD
BAWARITH BUILDING, GRAND MOSQ
ROAD P.O.BOX 409, PORT SUDAN, SUDAN
TEL : 28354 FAX : 22405

Final destination (for the Merchant reference)

Gross weight	114,720.00
Measurement	115.000
	CBM

105.60 MT
DI OCTYL PHTHALATE (DOP)
480DRUMS OF EACH NET WT.220KGS
IN EXPORT STANDARD PACKING
AS PER PROF. INV.NO. DSS-40108
DTD.8/1/2004
L/C NO. OM/DC/9004/04
DATED JAN 11, 2004
SAY : SIX CONTAINERS ONLY
"FREIGHT PREPAID"

Collect

El Hiloin Ind. Dev. Bank Group
Omdurman Capital Projects
SEEN
IMP / EXP. DEPT.

copy
non-negotiable

JAN 24 2004

Date JAN 24 2004
WEHR ALTONA W030
BUSAN, KOREA

WAN HAI LINES KOREA LTD.

By

AS AGENT FOR THE CARRIER
WAN HAI LINES LTD.

EXHIBIT 4

09 '08/04-17:20:24

Copiecredoc-0712-000001

1

----- Instance Type and Transmission -----
 Notification (Transmission) of Original sent to SWIFT (ACK)
 Network Delivery Status : Network Ack
 Priority/Delivery : Normal
 Message Input Reference : 1719 040809BYBBBEBBAXXX3265244985

----- Message Header -----
 Swift Input : FIN 499 Free Format Message
 Sender : BYBBBEBBXXX
 BYBLOS BANK EUROPE S.A.
 BRUSSELS BE
 Receiver : KOEXKRSEXXX
 KOREA EXCHANGE BANK
 SEOUL KR

MUR : CORMIC

----- Message Text -----
 20: Transaction Reference Number
 NONE
 21: Related Reference
 019-RUC-410132
 79: Narrative
 RE YOUR MT 420 DATED 09-08-04
 UNDER YOUR REF 019-RUC-410132
 FOR USD 96.624

KINDLY NOTE EL NILEIN BANK - ENIDSDKH - WILL
 EFFECT THIS PAYMENT THROUGH ANOTHER BANK.

REGARD

----- Message Trailer -----
 {MAC:BDBD6E33}
 {CHK:6FCC12586029}

----- Interventions -----
 Category : Network Report
 Creation Time : 09/08/04 17:19:14
 Application : SWIFT Interface
 Operator : SYSTEM
 Text
 {1:F21BYBBBEBBAXXX3265244985}{4:{177:0408091719}}{451:0}{108:CORMIC}}

EXHIBIT 5

24/09/04-14:20:28

Globtestprt-0551-000001

1

----- Instance Type and Transmission -----
 Notification (Transmission) of Original sent to SWIFT (ACK)
 Network Delivery Status : Network Ack
 Priority/Delivery : Normal
 Message Input Reference : 1420 040924BYBBBEBBAXXX3302250262

----- Message Header -----
 Swift Input : FIN 910 Confirmation of Credit
 Sender : BYBBBEBBXXX
 BYBLOS BANK EUROPE S.A.
 BRUSSELS BE
 Receiver : ENIDSDKHXXX
 EL NILEIN INDUSTRIAL DEVELOPMENT BANK GROUP
 KHARTOUM SD

MUR : 09113

----- Message Text -----
 20: Transaction Reference Number
 FT0424400008
 21: Related Reference
 OM-DC-9004-04
 25: Account Identification
 675112310223
 32A: Value Date, Currency Code, Amt
 Date : 31 August 2004
 Currency : USD (US DOLLAR)
 Amount : #96.624,00#
 52A: Ordering Institution - BIC
 BYBBBEBB
 BYBLOS BANK EUROPE S.A.
 BRUSSELS BE
 72: Sender to Receiver Information
 YOUR REF OM/DC/9004/04
 AS PER OUR SWIFT MT 299 DATED
 09.08.2004 TRN FT0421700016
 AND YOUR ASSIGNMENT SWIFT MT 299
 DD 11.08.2004

----- Message Trailer -----
 {CHK:D4D587DF5B54}

----- Interventions -----
 Category : Network Report
 Creation Time : 24/09/04 14:19:20
 Application : SWIFT Interface
 Operator : SYSTEM
 Text
 {1:F21BYBBBEBBAXXX3302250262}{4:{177:0409241420}{451:0}{108:09113}}

EXHIBIT 6

BYBLOS BANK EUROPE S.A.
RUE MONTOYER 10 - BTE 3
B-1000 BRUXELLES
BELGIUM

EL NILEIN INDUSTRIAL DEVELOPMENT
BANK
PO BOX 1722 UNITED NATIONS SQUARE
KHARTOUM
SUDAN

DATE : 24 SEP 2004

REFERENCE : FT/04244/00008

CREDIT ADVICE

YOUR USD ACCOUNT 675-1123102-23 HAS BEEN CREDITED
VALUE 31 AUGUST 2004 AS FOLLOWS :

BY ORDER OF : BYBLOS BANK BELGIUM

REFERENCE : OM-DC-9004-04

TRANSFER AMOUNT USD 96.624,00

AMOUNT CREDITED USD 96.624,00

YOUR REF OM/DC/9004/04 AS PER OUR SWIFT MT 299 DATED 09.08.2004 TRN
FT0421700016 AND YOUR ASSIGNMENT SWIFT MT 299 DD 11.08.2004

PLEASE QUOTE THE ABOVE TRANSACTION REFERENCE NUMBER IN ALL CORRESPONDENCE

THIS ADVICE REQUIRES NO SIGNATURE

910.1.1.GB

EXHIBIT 7

11/08/04-11:01:39

Copietft-1965-000001

1

----- Instance Type and Transmission -----
Original received from SWIFT
Priority : Normal
Message Output Reference : 1100 040811BYBBEBBAXXX3267283373
Correspondent Input Reference : 1100 040811ENIDSDKHAXXX2160022327

----- Message Header -----
Swift Output : FIN 299 Free Format Message
Sender : ENIDSDKHXXX
EL NILEIN INDUSTRIAL DEVELOPMENT BANK GROUP
KHARTOUM SD
Receiver : BYBBEBBXXX
BYBLOS BANK EUROPE S.A.
BRUSSELS BE

----- Message Text -----
20: Transaction Reference Number
OM/DC/9004/04
21: Related Reference
FT0421700016
79: Narrative
QUOTE:
OUR TRANSFER INSTRUCTIONS BY SWIFT MT202 DD.AUGUST
3RD.,2004 FOR USD.96.624,00 FAVOR KOREA EXCHANGE
BANK SEOUL FOR FURTHER CREDIT TO THEIR I.B.S.D.
BRANCH UNDER THEIR REF.019-RUC-410132
REFERENCE IS MADE TO THE MENTIONED TRANSFER WHICH
WE UNDERSTAND HAS BEEN TRANSFERED THROUGH BANK OF
NEW YORK WITH THE MENTION OF THE NAME OF OUR BANK
AND HAS BEEN FROZEN BY THE US AUTHORITIES OFAC
UNDER THE US SUDANESE SANCTION REGULATIONS.
WE,EL NILEIN INDUSTRIAL DEVELOPMENT BANK
IRREVOCABLY ASSIGN TO YOU, BYBLOS BANK EUROPE,THIS
AMOUNT(PLUS ANY ACCRUED INTEREST) AND UNDERTAKE TO
PAY IT TO YOU ONCE RELEASED PARTIALLY OR TOTALLY
BY THE US OFAC AUTHORITIES.
WE AUTHORIZE BYBLOS BANK EUROPE TO PROCEEDS WITH
THE OFFICIAL NOTICE OF THIS ASSIGNMENT WHEN
APPROPRIATE.

BEST REGARDS.

ABDEL GADIR HASSAN
ELNILEIN IND.DEVEL.BANK GROUP

----- Message Trailer -----
{MAC:8B09DC4C}
{CHK:46AF5EF3A2C3}